

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17, 19, 23 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the holder" in lines 11 and 15. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites that "the holder is arrange detachably in the concrete sleeper." and later recites "wherein the holder is arranged in an insert comprising electrically insulating material and being cast integrally into the concrete sleeper." These limitations appear to contradict each other as the claim first states that the holder is arranged detachably in the sleeper and later states that the holder is cast integrally in the sleeper. It is further unclear if the holder is cast integrally in the sleeper or if the insulating material is cast integrally in the sleeper. This leaves the claims vague and indefinite.

Claim 5 recites the limitation "the shaped extension" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the spacer element" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 15 recites the limitation "the spacer element" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 9, 19, 23 and 24 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Brown et al (US 5,566,882) in view of Fasterding et al (US 4,802,623).

Brown et al discloses a rail fastening comprised of a rail 2, the rail resting on a ribbed rail pad 4 and anchored to a concrete sleeper, cited as a rail foundation 3. The ribbed rail pad 4 is shown in cross section in figure 6E, and showing the ribbed structure under the rail. The fastening assembly is further comprised of a resilient railway fastening clip 1, having a toe portion 14 which bears on the foot of the rail 2. The rail clip 1 is held in place by a holder 5, the holder having upstanding shoulders 15 and a channel 53 for accepting the extending legs of the clip 1. The holder 5 is further cast into the concrete sleeper with the clip 1 being detachable from the holder 5, and the front wall 7 of the holder 5 is also detachably connected to the holder and the sleeper. The holder is further comprised of a downwardly extending leg 50 that extends and is cast into the concrete sleeper.

Brown et al discloses the anchoring assembly as described above. However, Brown et al does not specifically show insulating material cast into the concrete sleeper.

Art Unit: 3617

Fasterding et al discloses a concrete sleeper supporting a rail and an anchor and further comprised of a dowel 17 constructed of polyethylene material and attached to a connection portion constructed of glass fiber reinforced plastic material. It is well known in the art that polyethylene material and plastic material act as electrical insulators. It would have been obvious to one of ordinary skill in the art to have applied plastic and polyethylene material layers, like that of Fasterding et al, to a rail tie and anchor assembly, like that of Brown et al, with the expected result of increasing the insulation of the sleeper and anchoring assembly and reducing wear and corrosion of the components.

Allowable Subject Matter

Claims 20-22 are allowed.

Claims 5-8 and 10-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 5, 11 and 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-5, 9-15 and 18-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. MCCARRY JR whose telephone number is (571)272-6683. The examiner can normally be reached on Monday through Friday 7:00am to 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3617

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/S. Joseph Morano/
Supervisory Patent Examiner, Art Unit 3617

/R. J. McCarry Jr./
Examiner, Art Unit 3617

RJM
October 28, 2009